

The record considered by the Board and the stipulations are the same as those listed in the original Award entered by Administrative Law Judge Kenneth J. Hursh on January 21, 2004, together with the pleadings, orders and other documents contained in the administrative file including the Notice of Appeal to the [Kansas] Court of Appeals filed by respondent and its insurance carrier on October 28, 2004.

ISSUES

Respondent and its insurance carrier (respondent) list numerous issues in their Application for Review before the Workers' Compensation Board and Docketing Statement¹ and in Respondent's Memorandum in Support of Application for Review Before the Workers Compensation Board.²

However, the threshold issue is whether the ALJ erred or exceeded his jurisdiction by entering the Award on Remand³ before the respondent's time to appeal the Board's Order of Remand to the Kansas Court of Appeals expired. For the reasons discussed below, that issue is dispositive of this appeal.

FINDINGS OF FACT

1. The original Award was entered by the ALJ on January 21, 2004. Claimant timely appealed that Award to the Board. By its Order of September 30, 2004, the Board reversed the ALJ's finding of untimely notice of accident and the resulting denial of compensation and remanded the matter to the ALJ for a determination of the remaining undecided issues.

2. On October 6, 2004, Judge Hursh entered an Award on Remand.

3. On October 28, 2004, respondent appealed the Board's September 30, 2004 Order to the Kansas Court of Appeals. "Any party may appeal from a **final** order of the board by filing an appeal with the court of appeals within 30 days of the date of the final order."⁴ (Emphasis added.) During oral argument to the Board, the parties' represented that this appeal to the Kansas Court of Appeals is still pending.

CONCLUSIONS OF LAW

The Board finds and concludes that the ALJ's Award on Remand was premature. The Board's Order was not final until the 30-day time had expired for the appeal to the

¹ Application for Review Before the Workers Compensation Board and Docketing Statement (filed Oct. 18, 2004).

² Respondent's Memorandum in Support of Application for Review Before the Workers Compensation Board (filed Nov. 29, 2004).

³ Award on Remand (Oct. 6, 2004).

⁴ K.S.A. 44-556(a).

Kansas Court of Appeals.⁵ Because respondent timely appealed the Board's Order to the Kansas Court of Appeals, the ALJ was without jurisdiction to enter the Award on Remand. Accordingly, the Board must set aside that order and remand this matter to the ALJ with instructions to withhold issuing his order until such time as the Board's Order becomes final, either upon receipt of the mandate from the Kansas Court of Appeals or the appeal is otherwise finally adjudicated.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award on Remand entered by Administrative Law Judge Kenneth J. Hursh dated October 6, 2004, should be and is hereby reversed and remanded to the Administrative Law Judge in accordance with the above findings and conclusions.

IT IS SO ORDERED.

Dated this ____ day of March 2005.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Richard C. Wallace, Attorney for Claimant
Donald P. Herron/Edwin M. Soltz, Attorney's for Respondent and Federal Mutual
Insurance Company
Kenneth J. Hursh, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁵ See *Williams v. General Electric Company*, 27 Kan. App. 2d 792, 9 P.3d 1267 (1999). See also *Grimmett v. S & W Auto Sales Co. Inc.*, 26 Kan. App. 2d 482, 988 P.2d 755 (1999); *Holton Transport, Inc., v. Kansas Corporation Comm'n*, 10 Kan. App. 2d 12, 690 P.2d 399, rev. denied 236 Kan. 875 (1985). (Wherein the court held an order of remand is an interlocutory order. The court dismissed the appeal finding it was without jurisdiction to consider the matter because the Board's order remanding the matter to the ALJ is not a final order.)